

REMARKS

Further to the Amendment filed on May 9, 2011, Applicants are filing this Supplemental Response. Applicants respectfully request that the Examiner consider the remarks given in both the Amendment filed on May 9, 2011 and this Supplemental Response. Applicants have attempted to eliminate as much repetition as possible.

Issues under 35 U.S.C. § 103(a)

1) Claims 1 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jakobson et al. '719 (US 5,446,719) in view of JP '654 (JP 2001-025654) and Akiyama et al. '357 (US 5,399,357).

2) Claims 1 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '456 (JP 2003-012456) in view of Jakobson et al. '719, Akiyama et al. '357, and JP '654.

3) Claims 1 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '654 in view of Akiyama et al. '357.

Applicants respectfully traverse. Reconsideration and withdrawal of these rejections are respectfully requested based on the following considerations.

Distinctions over the Cited References

Further to the remarks provided in the Amendment filed on May 9, 2011, Applicants submit the following additional remarks.

With specific respect to Jakobson et al. '719, enclosed herewith is an Experimental Report and English translation thereof, which provides results of follow-up tests on Example VII of Jakobson et al. '719. This Experimental Report was provided to the Japanese Patent Office in a corresponding Japanese application. The Examiner is respectfully requested to review the enclosed Experimental Report as it provides strong evidence of the patentability of the present invention.

In the Experimental Report, Cited Reference 1 refers to JP-A-Hei-6-192065, which corresponds to Jakobson et al. '719. The Experimental Report concludes:

A composition prepared in accordance with Example VII of Cited Reference 1 (Comparative Example 7) became white turbid when mixed with an equivolume of water. In addition, it was found that when a composition as

prescribed in Example 3 of the present application prepared with this emulsifying agent was mixed with water, it became white turbid. It is indicated by the matter where the composition does not become transparent when mixed with water that microemulsions are not formed. Therefore, it is evident that the technology of the present application is not accomplished unless the polyglycerol moiety of the polyglycerol middle-chained fatty acid ester has a degree of polymerization satisfying the range defined in the present application. It is considered from the above that the present application and the technology described in Cited Reference 1 are clearly distinguishable from each other.

As stated in *KSR International Co. v Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007), “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Furthermore, the mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art. *Id.* As described above, Applicants have shown that the present invention achieves unexpected and unpredictable results.

Thus, due to the unexpected results as achieved by the present invention, the rejection in view of Jakobson et al. ‘719 has been overcome. Reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion


All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Registration No. 58,258, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

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Respectfully submitted,

By 
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Attachment: Experimental Report and English translation thereof